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9 **IN THE UNITED STATES DISTRICT COURT**  
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
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13 GREGORY FRANLIN,  
14 Plaintiff,  
15 v.  
16 I. MIJARES, et al.,  
17 Defendants.  
18

Case No. CV 22-5478 CBM (MRW)

**ORDER DISMISSING ACTION  
WITHOUT LEAVE TO AMEND**

**FRCP 41 JS-6**

19 The Court dismisses this action for failure to state a claim upon  
20 which relief may be granted.

21 \* \* \*

22 1. This is a pro se prisoner civil rights action. Plaintiff's original  
23 complaint alleged that several correctional officers at Plaintiff's prison  
24 "retailiated" against him when Plaintiff refused to accept a transfer to a  
25 cell with a cellmate. Plaintiff contended that he was placed in detention  
26 because of "previous complaints he brought against numerous officers."  
27 (Docket # 3 at 6-7.)  
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1           2. Pursuant to 28 U.S.C. §§ 1915(e) and 1915A, Magistrate Judge  
2 Wilner screened the complaint. Judge Wilner concluded that Plaintiff  
3 failed to state a plausible cause of action against any of the officers.  
4 Notably, the complaint alleged no facts from which to infer that any of the  
5 guards knew of his previous lawsuits or grievances, or that they put  
6 Plaintiff in the SHU because of them. (Docket # 9 at 1-3.) As a result,  
7 Plaintiff failed to properly plead the elements of a First Amendment  
8 retaliation claim. Rhodes v. Robinson, 408 F.3d 559, 567-568 (9th Cir.  
9 2005) (retaliation cause of action includes element that a state actor took  
10 adverse action against prisoner “because of” her/his protected conduct);  
11 Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009) (same).

12           3. Additionally, to the extent that Plaintiff contended that the  
13 guards retaliated against him because of his single-cell status, that was not  
14 enough to support a legitimate Section 1983 claim. The First Amendment  
15 of the U.S. Constitution does not include a right to a prison cell without a  
16 roommate, so an adverse action from prison staff could not have violated  
17 Plaintiff’s civil rights. Entler v. Gregoire, 872 F.3d 1031, 1039 (9th Cir.  
18 2017).

19           4. Judge Wilner’s screening order gave Plaintiff leave to amend  
20 his complaint. (Docket # 9.) Plaintiff subsequently filed his First Amended  
21 Complaint. (Docket # 14.) However, the FAC pled even fewer relevant  
22 facts about Plaintiff’s claim. Notably, Plaintiff admitted that he threatened  
23 to file a grievance against the guards after he refused the housing  
24 assignment and they put him in detention. From this, Judge Wilner  
25 observed that “the face of the [amended] complaint shows that the guards  
26 didn’t retaliate against Plaintiff based on his grievances” filed before the  
27 incident. (Docket # 15.)  
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1           8. Dismissal of a civil action under Rule 41 may be appropriate to  
2 advance the public's interest in the expeditious resolution of litigation, the  
3 court's need to manage its docket, and to avoid the risk of prejudice to  
4 defendants. Omstead v. Dell, Inc., 594 F. 3d 1081, 1084 (9th Cir. 2010).  
5 Additionally, a court should consider the public policy favoring disposition  
6 of cases on their merits and the availability of less drastic alternatives in  
7 its evaluation. Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

8           9. In the present action, the Court finds dismissal of the action  
9 without leave to amend is appropriate. Plaintiff failed to file a proper  
10 complaint against these defendants after receiving two detailed  
11 explanations of the defects from the magistrate judge. Plaintiff's refusal or  
12 inability to file a plausible complaint against these parties in light of the  
13 court's warnings demonstrates that he has no interest in advancing his  
14 action here.

15          10. By contrast, the Court, the defense, and the public have a  
16 strong interest in terminating this action. This is particularly true given  
17 that Plaintiff has not stated a legitimate cause of action (despite several  
18 opportunities to do so), thereby preventing any feasible advancement of the  
19 case. Furthermore, no sanction short of dismissal will be effective in  
20 moving this case forward. Carey, 856 F.2d at 1440. The Court finds that  
21 dismissal is appropriate under Rule 41(b). Applied Underwriters, 913 F.3d  
22 at 892.

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1           11. Therefore, the present action is DISMISSED without leave to  
2 amend.

3           IT IS SO ORDERED.  
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6 Dated: FEBRUARY 23, 2023



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HON. CONSUELO B. MARSHALL  
SENIOR U.S. DISTRICT JUDGE

9 Presented by:



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HON. MICHAEL R. WILNER  
UNITED STATES MAGISTRATE JUDGE